IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.8098 OF 2005

Mr. Gianender Jaibhagwan Chauhan ...Applicant.

V/s

The State of Maharashtra ...Respondent.

Mr. A.H.H. Ponda for the applicant.

Mr. S.S. Tatkare, APP alongwith Mr. S.R. Borulkar, PP for the State.

CORAM: V.M. KANADE, J.

DATE: January 20, 2006

P.C.:

1. Heard the learned Counsel appearing on behalf of the applicant and the learned APP for the State.

2. The applicant was arrested in connection with an offence punishable under section 302 of the Indian Penal Code. It is alleged that the applicant was working on a Ship "M.T. JAG - LEELA" and that he had committed the murder of his superior officer in the Engine Room on 13th/14th June, 2005. The FIR was lodged on 29/6/2005 after the Ship touched the Harbour of Bombay Port and the applicant was arrested on the very same day. The application for bail filed by the applicant in the Sessions Court was rejected.

3. It is submitted by the learned Counsel appearing on behalf of the applicant that the dead body of the deceased was not recovered and the only evidence on the basis of which the allegation was made against the applicant was the D.N.A. Report which was received by the Police. Secondly, the contents of the diary of the applicant which was maintained by him, according to the prosecution, indicated that he had committed the offence as the applicant clearly had a grudge against the deceased which was evident from writings which were found in the said diary and thirdly a wound was found on the hand of the applicant which was allegedly a wound made by knife with which the applicant had murdered the deceased and the injury to the eye of the accused which was caused as a result of acid which was allegedly thrown by the applicant on the face of the deceased which also injured the applicant. The learned Counsel appearing on behalf of the applicant submitted that apart from the said evidence, there was no other evidence available against the applicant. He submitted that he could demonstrate that all the three circumstances had not been established and, therefore, the applicant was entitled to be released on bail particularly when the dead body was not found. He also submitted that the

charge-sheet which has been filed by the Police was incomplete and, therefore, it was not a charge-sheet in the eye of law and the subsequent documents had been filed after a lapse of 90 days and, therefore, the applicant was entitled to be released on bail under the provisions of section 167(2) of the Criminal Procedure Code. In support of the said submission, the learned Counsel appearing on behalf of the applicant has relied on number of judgments of this Court and the Supreme Court.

4. The learned Counsel appearing on behalf of the State, on the other hand, has vehemently opposed the application for grant of bail. He has submitted that there was an ample evidence to indicate that the applicant had murdered the deceased. He submitted that the blood of the accused was found in the Engine Room which fact was revealed by D.N.A. Report which was submitted by the expert and he further submitted that the statements of the other witnesses also indicated that the applicant alone was responsible for commission of the said offence. He submitted that during the course of investigation, it was revealed that the dead body was taken away from the Engine Room and there were blood marks on the deck which indicated that the dead body, possibly, was thrown at night from

the deck in the high seas and, therefore, there was no possibility of the recovery of the dead body. It was further submitted that the attendance sheet clearly indicated that only the accused was supposed to report at night time in the Engine Room of the said Ship and, therefore, there was no reason why any other person would have ventured to go in the Engine Room. He also relied upon the number of judgments to oppose the submissions of the learned Counsel appearing on behalf of the applicant on the point of the charge-sheet being incomplete and the effect of filing such a charge-sheet.

5. I have given my anxious consideration to the submissions which are made by both the Counsel. I have perused the D.N.A. report. I have also perused the extract of the diary which was maintained by the applicant - accused. I have also seen the injury certificate of the applicant - accused which discloses that there was an injury on his palm and also near his eye. There was a corrosion which indicated that as a result of corrosive material the said injury was caused. After perusing the said evidence, I am of the view that the applicant is entitled to be released on bail for the following reasons.

6. It has to be noted here that the alleged incident took place in the atlantic ocean. The dead body is not recovered and, therefore, it is not possible to know the cause of death of the person. It is also not possible to know whether the said person is dead or alive. It is no doubt true that it has been held by this Court as also by the Supreme Court that for the purpose of proving an offence under section 302 of the I.P.C., it is not always necessary to produce the dead body and if circumstances indicate commission of an offence of murder then, in that case, a person can be convicted even if the dead body is not found. Yet, such circumstances are rare and in the absence of the dead body being found, the other circumstantial evidence or the eye witness account should be consistent with the guilt of the applicant - accused. In the present case, there are only three incriminating circumstances against the accused. The first is the D.N.A. report. A perusal of the said report indicates that blood of this person was found in the engine room on the deck. Apart from the blood of the applicant and the deceased, the blood of four other persons was found in the engine room. In view of this D.N.A. report, it cannot be said with certainty that the applicant alone was responsible for the alleged murder of the deceased. The said report,

therefore, in fact, does not support the prosecution case. I have perused the said diary. The accused - applicant was kept in a solitary confinement right from 13th/14th June, 2005. The said writing does not indicate that his intention was to commit murder of his superior officer and lastly the third circumstance regarding the injury on the palm of the applicant is concerned, that by itself cannot point a finger of doubt against the guilt of the applicant as such injuries are often possible in cases of sea voyage where accidents do take place. Thus, in my view, the evidence against the present applicant is of a very weak nature and there is every possibility that finally he may be acquitted in the trial and, therefore, this is a matter where the applicant is entitled to be released on bail. In view of this it is not necessary to consider the second submission made by the learned Counsel appearing on behalf of the applicant.

7. In the result, the application is allowed. The applicant is directed to be released on bail in the sum of Rs 25,000/- with one or two sureties in the like amount. The applicant shall give his fixed place of residence after he is released on bail.

8. Learned Counsel for the applicant submits that he shall be staying at his native place district Rewari, Haryana. After he is released, he shall report to Rewari Police Station once in a week. The passport has already been impounded. The respondent shall not return the passport without the permission of the Court. The applicant shall not tamper with the evidence or threaten the witnesses. The applicant shall also report to DCB CID-I once in three months till the pendency of the trial.

9. Application is allowed in the above terms.

V.M. KANADE, J.